

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

Index No. _____
Purchased _____

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**GARNELL BATES, which the police named
GARNELL BIGGS,**

Plaintiff,

VERIFIED COMPLAINT

-against-

**THE CITY OF NEW YORK, DET. MICHAEL SMYTH
OF NBBX, SHIELD #420, DET. SMYTH'S PARTNER
UNDER DOCKET #2013BX005091 S/H/A
JOHN/JANE DOE I, THE SUPERVISING SGT.
UNDER DOCKET #2013BX005091 S/H/A
JOHN/JANE DOE II AND OTHER NYPD POLICE
OFFICER S/H/A JOHN/JANE DOE III-V,
Defendants**

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**GARNELL BATES, by his attorneys, PAPA, DEPAOLA AND BROUNSTEIN,
respectfully alleges as follows:**

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times mentioned, Plaintiff **GARNELL BATES** was a resident of Bronx County, City and State of New York.
2. At all times mentioned, Defendant **CITY OF NEW YORK**, was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.
3. On or about the 9th day of July, 2013 and within ninety (90) days after some of the claims herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant **CITY OF NEW YORK**, by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendant **CITY**

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OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.

4. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.
5. The Plaintiff has complied with the request of the municipal Defendant's for an oral examination pursuant to Section 50-H of the General Municipal Law and/or the Public Authorities Law and/or no such request was made within the applicable period.
6. Upon information and belief, at all times mentioned, Defendants **DET. MICHAEL SMYTH OF NBBX, SHIELD #420, DET. SMYTH'S PARTNER UNDER DOCKET #2013BX005091 S/H/A JOHN/JANE DOE I, THE SUPERVISING SGT. UNDER DOCKET #2013BX005091 S/H/A JOHN/JANE DOE II AND OTHER NYPD POLICE OFFICER S/H/A JOHN/JANE DOE III-V**, were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK**.
7. On or about January 24, 2013, at approximately 4:00-5:00 P.M. in the vicinity of the inside of 2000 Valentine Avenue, Apt. 220, County of Bronx, State of New York the Defendants jointly and severally in their capacity as police

officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff **GARNELL BATES**, in an excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A SECOND CAUSE OF ACTION

8. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "7" with full force and effect as though set forth at length herein.
9. On or about January 24, 2013, at approximately 4:00-5:00 P.M. in the vicinity of the inside of 2000 Valentine Avenue, Apt. 220, County of Bronx, State of New York the Defendants, jointly and severally did place Plaintiff **GARNELL BATES** in imminent fear of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A THIRD CAUSE OF ACTION

10. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "9" with full force and effect as though set forth at length herein.
11. On or about January 24, 2013, at approximately 4:00-5:00 P.M. in the vicinity of the inside of 2000 Valentine Avenue, Apt. 220, County of Bronx, State of

New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the County of the Bronx and there charged him with the crimes on Docket No. 2013BX005091. The Plaintiff was thereafter held in custody over the course of approximately three (3) days or approximately forty-eight (48) hours until he was released on his own recognizance. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FOURTH CAUSE OF ACTION

12. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "11" with full force and effect as though set forth at length herein.
13. On or about January 24, 2013, at approximately 4:00-5:00 P.M. in the vicinity of the inside of 2000 Valentine Avenue, Apt. 220, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately three (3) days or approximately forty-eight (48) hours before he was released. The Defendants

intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FIFTH CAUSE OF ACTION

14. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "13" with full force and effect as though set forth at length herein.
15. Upon information and belief, on or about January 24, 2013 and from that time until the dismissal of charges on or about April 15, 2013 which was a favorable termination for the accused by the Honorable Judge presiding at, Bronx County Supreme Court, Defendants **CITY OF NEW YORK, DET. MICHAEL SMYTH OF NBBX, SHIELD #420, DET. SMYTH'S PARTNER UNDER DOCKET #2013BX005091 S/H/A JOHN/JANE DOE I, THE SUPERVISING SGT. UNDER DOCKET #2013BX005091 S/H/A JOHN/JANE DOE II AND OTHER NYPD POLICE OFFICER S/H/A JOHN/JANE DOE III-V**, deliberately and maliciously prosecuted Plaintiff **GARNELL BATES**, an innocent man without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York.
16. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete

information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.

17. The commencement of these criminal proceedings under Docket No. 2013BX005091 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.
18. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A SIXTH CAUSE OF ACTION

(This Cause of action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

19. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "18" as it set forth at length herein.
20. Defendants **DET. MICHAEL SMYTH OF NBBX, SHIELD #420, DET. SMYTH'S PARTNER UNDER DOCKET #2013BX005091 S/H/A JOHN/JANE DOE I, THE SUPERVISING SGT. UNDER DOCKET #2013BX005091 S/H/A JOHN/JANE DOE II AND OTHER NYPD POLICE OFFICER S/H/A JOHN/JANE DOE III-V** were at all times relevant, duly appointed and acting officers of the City of New York Police Department.
21. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

22. Plaintiff **GARNELL BATES** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.
23. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.
24. On or about January 24, 2013, the Defendants, armed police, while effectuating the seizure of the Plaintiff **GARNELL BATES**, did search, seize, assault and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.
25. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:
 - a. Freedom from assault to his person;
 - b. Freedom from battery to his person;
 - c. Freedom from illegal search and seizure;
 - d. Freedom from false arrest;
 - e. Freedom from malicious prosecution;
 - f. Freedom from the use of excessive force during the arrest process;
 - g. Freedom from unlawful imprisonment;
 - h. Freedom from loss of his liberty.

26. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.
27. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

WHEREFORE, Plaintiff demands judgment against the Defendants, together with the costs and disbursements of this action in the amount of damages greater than the jurisdictional limit of any lower court where otherwise have jurisdiction, together with attorneys' fees and costs for bringing this case and punitive damages.

Dated: Bayside, New York
November 13, 2013

Yours, etc.

PAPA, DEPAOLA AND BROENSTEIN

BY:

JOHN R. DEPAOLA

Attorneys for Plaintiff

42-40 Bell Boulevard Suite 500

Bayside, New York 11361

(718) 281-4000

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GARNELL BIGGS,

VERIFICATION

Plaintiff,

-against-

THE CITY OF NEW YORK, DET. MICHAEL SMYTH
OF NBBX, SHIELD #420, DET. SMYTH'S PARTNER
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Defendants

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I, JOHN R. DEPAOLA, an attorney admitted to practice in the courts of New York State, state that I am a member of the firm of PAPA, DEPAOLA AND BROUNSTEIN, the attorneys of record for Plaintiffs in the within action; I have read the foregoing and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by Plaintiff is because Plaintiff resides outside the county where deponent maintains his office.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: Bayside, New York
November 13, 2013



JOHN R. DEPAOLA

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Plaintiff,

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SGT. UNDER DOCKET #2013BX005091 S/H/A JOHN/JANE DOE II AND OTHER NYPD
OFFICERS S/H/A JOHN/JANE DOE III-V

Defendants

SUMMONS AND VERIFIED COMPLAINT

PAPA DEPAOLA AND BROUNSTEIN
BY: JOHN R. DEPAOLA
Attorney for Plaintiffs
42-40 Bell Boulevard
Bayside, NY 11361
Tel. (718) 281-4000

To: CORPORATION COUNSEL OF NEW YORK CITY

Attorney(s) for Defendants

Service of a copy of the within is hereby admitted.
Dated _____

Attorney(s) for